

Domestic Wiretaps Curtailed

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Appeals Court Curbs Watch On Radicals

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The United States Court of Appeals in Cincinnati ruled yesterday that the Constitution forbids wiretapping without a court order in "domestic subversion" cases.

Rejecting the Nixon administration's claim of "inherent power" to tap the phones of suspected radicals without a judge's permission, the divided Sixth U.S. Circuit Court of Appeals held that the defense was entitled to inspect the records of the surveillance.

Such surveillance is now carried out on approval of the Attorney General.

Unless reversed by the Supreme Court, the decision—backed up by the binding disclosure order—would cripple the administration's program of domestic surveillance on dissident groups, according to the Justice Department.

The decision, which becomes the law of the Sixth Circuit states of Michigan, Ohio, Kentucky and Tennessee, can only set the stage for the ultimate test at the next and last level, the Supreme Court. But it was a major setback for Attorney General John N. Mitchell.

Another test case is working its way through the Ninth Circuit on the West Coast. A final Supreme Court decision is unlikely before the fall term.

FBI Director J. Edgar Hoover testified in Congress a year ago that there were 36 telephone taps and two planted microphones under authorization "in the security field." He has given the latest figures in secret and the House Appropriations Committee has not released them.

The court upheld the order of U.S. District Judge Damon J. Keith in Detroit to disclose

the records on eavesdropping to Lawrence (Pun) Plamondon, minister of defense of the White Panther Party, and his lawyer, William M. Kunstler, so they can search for a link between the prosecution's evidence and the illegal surveillance.

Plamondon and two other White Panthers, members of a group that advocates radicalizing young people by rock music, are awaiting trial on a charge of conspiring to blow up the Central Intelligence Agency offices at Ann Arbor, where the party is based.

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Wiretaps in 'Domestic Subversion' Require Warrant, U.S. Court Rules

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The court of appeals divided sharply both on the legality of the warrantless wiretap and the right of the accused to inspect the records rather than permit a judge to decide whether they might be "relevant" to the prosecution or defense of the charge.

Judge George C. Edwards, former Detroit police chief and long an advocate of wiretapping under court supervision, wrote the majority opinion. He was joined by the circuit's chief judge, Harry Phillips of Nashville. Judge Paul C. Weick of Akron, Ohio, dis-

Edwards, a noted liberal in other areas of the law, was instrumental in 1967 in obtaining the approval of the Judicial Conference of the United States for then-pending wiretap legislation. He suggested that the Justice Department use the law that passed in 1968, with its procedure for getting warrants, in combating subversion as well as organized crime.

The judge scolded the administration for claiming that courts have no business interfering with wiretaps for collecting intelligence on subversives. The Constitution, he

said, divides the nation's "sovereign power" into three branches and "was designed to require sharing in the administration of that awesome power."

Despite urgings that "the awesome power sought by the Attorney General will be used with discretion," said the judge, "obviously, even in very recent days, this has not always been the case."

Judge Weick's dissent said there was no difference between the validity of executive power to wiretap in foreign subversion cases and domestic

cases—a point the majority did not reach—because the danger from both sources was ever.

"At a time when our soldiers are fighting on foreign soil and there is turbulence at home, thereby confronting the President on two fronts with many serious, perplexing and complex problems," the dissent said, "a heavy responsibility rests on his shoulders to protect not only our fighting men abroad but also the people at home from the destruction of their government by domestic subversives."